

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

JANICE M. KOETTING,

Appellant,

v.

STATE BOARD OF NURSING,

Respondent.

DOCKET NUMBER WD71766

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 6, 2010

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge

APPELLATE JUDGES

Division Two: Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard
and Alok Ahuja, Judges

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JANICE M. KOETTING,)
)
Appellant,)
v.)
)
STATE BOARD OF NURSING,)
)
Respondent.)

WD71766

Cole County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and
Victor C. Howard and Alok Ahuja, Judges

The Administrative Hearing Commission had sufficient evidence to discipline Janice Koetting pursuant to section 335.066.2(1) for a pattern of absenteeism due to alcohol abuse. In subjecting Koetting to such discipline, the AHC ruled in favor of the Missouri State Board of Nursing. Koetting appealed to the Cole County Circuit Court, and the trial court affirmed the disciplinary decision of the AHC.

AFFIRMED.

Division Two holds:

In her first two points on appeal, Koetting argues (1) that the AHC's decision was not supported by competent and substantial evidence, because she argues there was no evidence that Koetting's absences from work were caused by alcohol use; and (2) even if the absences were alcohol related, those absences did not impair Koetting's ability to perform the work of a nurse and consequently were not subject to discipline under section 335.066.2(1). However, we note that Koetting signed an agreement acknowledging that her absences were due to alcohol abuse and there was competent testimony by her colleagues on that same issue. We also find that habitual alcohol abuse that results in a pattern of absences from work properly invokes discipline under section 335.066.2(1).

In her third point on appeal Koetting argues that because the AHC found that she could not be disciplined under section 335.066.2(5), she also could not be disciplined under section 335.066.2(1). However, we find that Koetting's interpretation of section 335.066.2(5) would cause section 335.066.2(1) to be superfluous statutory language, a statutory construction we presume was not intended by the legislature. Simply stated, Koetting's argument ignores the clear distinction the AHC correctly makes between section 335.066.2(5), which is limited to those acts that occur "in the performance of the functions or duties" of the profession, and section 335.066.2(1), which does not express such a limitation.

In her final point on appeal, Koetting argues that imposition of discipline under section 335.066.2(1) is in violation of public policy because it creates a dangerous incentive, allegedly encouraging nurses and other health professionals to report to work when they are impaired. However, our holding affirms the finding of the AHC that Koetting was not subject to the more stringent discipline available under section 335.066.2(5). Consequently, our ruling today does not encourage nurses to risk driving drunk to work or to perform the work of a professional nurse while under the influence of alcohol. It does enable the Board to discipline, and therefore discourage, habitual, excessive alcohol use by professional nurses that would impair their ability to practice their profession.

Opinion by: Mark D. Pfeiffer, Judge

July 6, 2010

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